

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday, September 9, 2020
Place: Department B – 510 19th Street
Bakersfield, California

ALL APPEARANCES MUST BE TELEPHONIC
(Please see the court's website for instructions.)

Pursuant to District Court General Order 618, no persons are permitted to appear in court unless authorized by order of the court until further notice. All appearances of parties and attorneys shall be telephonic through CourtCall. The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

THE COURT ENDEAVORS TO PUBLISH ITS RULINGS AS SOON AS POSSIBLE. HOWEVER, CALENDAR PREPARATION IS ONGOING AND THESE RULINGS MAY BE REVISED OR UPDATED AT ANY TIME PRIOR TO 4:00 P.M. THE DAY BEFORE THE SCHEDULED HEARINGS. PLEASE CHECK AT THAT TIME FOR POSSIBLE UPDATES.

9:00 AM

1. [15-12904](#)-B-13 **IN RE: MARY HYDE**
[MHM-2](#)

MOTION TO DISMISS CASE
7-15-2020 [\[26\]](#)

MICHAEL MEYER/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted unless the debtor elects to convert.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The court will issue the order.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled.

The chapter 13 trustee ("Trustee") asks the court to dismiss this case because debtor is delinquent in the amount of \$1,827.00. Doc. #26. Before this hearing, another payment in the amount of \$609.00 will come due on July 25, 2020. Doc. #28. Debtor timely responded, stating that debtor is currently unemployed and cannot make the final plan payment. Doc. #32. Her only income is Social Security and she has searched for work but has not been able to secure a job. Debtor asks that she be given until the end of the year to pay off her plan. Id.

The debtor presents no evidence to support these claims. Now, there is nothing before the court to support exercise of its discretion under § 1307 to do anything other than dismiss or convert the case.

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth), 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(6) for being delinquent in making plan payments. Also, failure to complete the Plan is a material default supporting dismissal under § 1307(c)(6). The court is aware of authority suggesting there is discretion to allow a short extension of time

for the debtor to complete payments under a plan. See Klaas v. Shovlin (In re Klaas), 858 F.3d 820 (3d Cir. 2017); In re Hill, 374 B.R. 745 (Bankr. S.D. Cal. 2007); In re Brown, 296 B.R. 20, 22 (Bankr. N.D. Cal. 2003). But there is no evidence supporting the debtor's position.

The confirmed plan appears to be a "save the car" plan with administrative payments to counsel and the Trustee. Extending out the payments harms the secured creditor provided for under the plan here. The plan also provided 0% to unsecured creditors.

This matter will be called to confirm whether debtor is current and if not, whether the debtor would rather convert to Chapter 7 instead of having the case dismissed.

2. [20-12104](#)-B-13 **IN RE: ROBERT WEAVER AND VURLA WITTMAN**
[MHM-1](#)

MOTION TO DISMISS CASE
8-12-2020 [\[19\]](#)

MICHAEL MEYER/MV
MICHAEL REID/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The court will issue the order.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled.

This motion is GRANTED. Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth), 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011).

Here, the chapter 13 trustee ("Trustee") has requested dismissal pursuant to 11 U.S.C. §§ 1307(c), 1307(e) and 1308(a). Trustee alleges that debtor has failed to comply with §§ 1307(c) and 1308(a). 11 U.S.C. § 1308(a) states

Not later than the day before the date on which the meeting of the creditors is first scheduled to be held under section 341(a), if the debtor was required to file a tax return under applicable nonbankruptcy law, the debtor shall file with appropriate tax authorities all tax returns for all taxable periods ending during the 4-

year period ending on the date of the filing of the petition.

11 U.S.C. § 1307(e) states

Upon the failure of the debtor to file a tax return under section 1308, on request of a party in interest or the United States trustee and after notice and a hearing, the court shall dismiss a case or convert a case under this chapter to a case under chapter 7 of this title, whichever is in the best interest of the creditors and the estate.

Trustee states that debtor failed to file state and federal tax returns for the years 2018 and 2019. Doc. #19.

Debtor timely responded, stating that the "tax returns would be filed by August 28, 2020 at the latest. Debtors will have the returns filed and copies provided to the Trustee before the hearing date." Doc. #24. Debtors ask that the motion be denied. Id.

This matter will be called to allow Trustee to respond to Debtors' opposition. The court is inclined to dismiss the case pursuant to § 1307(e) unless the tax returns were filed and are provided to the Trustee.

3. [20-11905](#)-B-13 **IN RE: PARMINDER SINGH**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
8-5-2020 [\[25\]](#)

PHILLIP GILLET/ATTY. FOR DBT.
DISMISSED 8/12/20

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: An order dismissing the case has already been entered. Doc. #29.

4. [20-11905](#)-B-13 **IN RE: PARMINDER SINGH**
[MHM-1](#)

MOTION TO DISMISS CASE
7-28-2020 [\[18\]](#)

MICHAEL MEYER/MV
PHILLIP GILLET/ATTY. FOR DBT.
DISMISSED 8/12/20

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: An order dismissing the case has already been
entered. Doc. #29.

5. [20-12215](#)-B-13 **IN RE: JONATHAN/CHRISTINA CURTIS**
[KMM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TOYOTA MOTOR CREDIT
CORPORATION
7-16-2020 [\[14\]](#)

TOYOTA MOTOR CREDIT CORPORATION/MV
RAJ WADHWANI/ATTY. FOR DBT.
KIRSTEN MARTINEZ/ATTY. FOR MV.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Continued to October 7, 2020 at 9:00 a.m.

ORDER: The court will issue an order.

Creditor Toyota Motor Credit Corporation ("Creditor") has filed an objection to confirmation of the debtor's plan. Unless this case is voluntarily converted to chapter 7, dismissed, or Creditor's opposition to confirmation is withdrawn, the debtors shall file and serve a written response not later than September 23, 2020. The response shall specifically address each issue raised in the opposition to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtors' position. Creditor shall file and serve a reply, if any, by September 30, 2020.

If the debtors elect to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than September 30, 2020. If the debtors do not timely file a modified plan or a written response, this motion will be denied on the grounds stated in the opposition without a further hearing.

6. [20-10521](#)-B-13 **IN RE: SCOTT O'NEIL**
[JHK-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR RELIEF
FROM CO-DEBTOR STAY
7-21-2020 [\[21\]](#)

SANTANDER CONSUMER USA INC./MV
ROBERT WILLIAMS/ATTY. FOR DBT.
JOHN KIM/ATTY. FOR MV.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in
conformance with the ruling below.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014- 1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

The movant, Santander Consumer USA Inc. dba Chrysler Capital as service for CCAP Auto Lease ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and § 1301 with respect to a 2018 Ram 1500 ("Vehicle").

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case by case basis." In re Mac Donald, 755 F.2d 715, 717 (9th Cir. 1985).

11 U.S.C. § 1301 provides a stay against a creditor's collections efforts against a co-debtor without court order under § 1301(c).

No party has opposed this motion.

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtors have failed to make at least five post-petition payments. The movant has produced evidence that

debtor is delinquent at least \$2,081.43. Doc. #27. The confirmed plan also provides that the stay is vacated for class 3 claims (which the Vehicle is classified in) and Creditor is in possession of the Vehicle.

Accordingly, the motion will be granted pursuant to 11 U.S.C. §§ 362(d)(1) and 1301 to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because Creditor is in possession of the Vehicle and it is a depreciating asset.

7. [20-12726](#)-B-13 **IN RE: JOSHUA/KRISTEN CARTER**
[GEG-1](#)

MOTION TO EXTEND AUTOMATIC STAY
8-26-2020 [\[14\]](#)

JOSHUA CARTER/MV
GLEN GATES/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The court will issue the order.

This Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Rule of Practice ("LBR") 9014-1(f)(2). Consequently, the creditors, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

If the debtor has had a bankruptcy case pending within the preceding one-year period, but was dismissed, then under 11 U.S.C. § 362(c)(3)(A), the automatic stay under subsection (a) of this section with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease, shall terminate with respect to the debtor on the 30th day after the filing of the later case.

Debtor had one case pending within the preceding one-year period that was dismissed, case no. 19-13918. That case was filed on September 16, 2019 and was dismissed on August 17, 2020 for failure to make plan payments. This case was filed on August 18, 2010 and the automatic stay will expire on September 17, 2020.

11 U.S.C. § 362(c)(3)(B) allows the court to extend the stay to any or all creditors, subject to any limitations the court may impose, after a notice and hearing where the debtor or a party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed.

Cases are presumptively filed in bad faith if any of the conditions contained in 11 U.S.C. § 362(c)(3)(C) exist. The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* Under the clear and convincing standard, the evidence presented by the movant must "place in the ultimate factfinder an abiding conviction that the truth of its factual contentions are highly probable. Factual contentions are highly probable if the evidence offered in support of them 'instantly tilt[s] the evidentiary scales in the affirmative when weighed against the evidence [the non-moving party] offered in opposition.'" Emmert v. Taggart (In re Taggart), 548 B.R. 275, 288, n.11 (9th Cir. BAP 2016) (citations omitted) (overruled on other grounds by Taggart v. Lorenzen, 139 S. Ct. 1795 (2019)).

In this case the presumption of bad faith arises. The subsequently filed case is presumed to be filed in bad faith because the prior case was dismissed because debtor failed to perform the terms of a plan confirmed by the court. 11 U.S.C. § 362(c)(3)(C)(i)(II)(cc).

However, based on the moving papers and the record, and in the absence of opposition, the court is persuaded that the presumption has been rebutted, the debtors' petition was filed in good faith, and it intends to grant the motion to extend the automatic stay as to all creditors.

As a result of mounting necessary medical payments and a repair to the family vehicle, debtors got behind in their plan payment. Doc. #16. They attempted to gather funds from family members but were not able to and the case was dismissed. Debtors believe their situation has changed as one joint debtor has received a slight increase in pay, and debtors' attorney has made it clear that the chapter 13 trustee must be paid before anyone else. Id.

The motion will be granted and the automatic stay extended for all purposes as to all parties who received notice, unless terminated by further order of this court. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order.

8. [19-11632](#)-B-13 **IN RE: GREGORY BATSCH**
[RSW-2](#)

MOTION TO MODIFY PLAN
7-14-2020 [\[48\]](#)

GREGORY BATSCH/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in
conformance with the ruling below.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

This motion is GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

9. [20-10444](#)-B-13 **IN RE: DAVID/LATUNJIA JOHNSON**
[PK-6](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF PATRICK KAVANAGH FOR
PATRICK KAVANAGH, DEBTORS ATTORNEY(S), AND/OR OBJECTION TO CLAIM
OF LVNV FUNDING LLC, CLAIM NUMBER 9
7-22-2020 [\[93\]](#)

DAVID JOHNSON/MV
PATRICK KAVANAGH/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied without prejudice in part and denied as
moot in part.

ORDER: The minutes of the hearing will be the court's
findings and conclusions. The court will issue
the order.

This motion is DENIED WITHOUT PREJUDICE IN PART and DENIED AS MOOT
IN PART. Movant asks for an award of fees incurred in objecting to
claim no. 9 filed by LVNV Funding LLC. Doc. #93. The court sustained
the unopposed objection on July 8, 2020. Doc. #89. Thus far there
has not been an order entered on the matter. There has been no
opposition to this motion either.

However, the record does not include any sort of fee agreement or
contract upon which a fee award can be granted against the claimant.
The motion states that attorney and debtors "agreed that the
attorney fees here would be hourly." Doc. #93. Yet there is no
evidence of a basis to award the fees against the claimant. Without
that evidence, the court cannot grant the motion.

If the motion requests fees to be awarded and paid by the debtor,
that is not clear from the motion. There is no order sustaining the
claim objection on the docket. Further there is no consent by the
debtor except counsel's hearsay statement in counsel's declaration.

Additionally, the request for relief to disallow claim no. 9 is
denied as moot; that relief has already been awarded. See PK-2, doc.
#89.

The court notes there is no order confirming the modified plan
granted on or about July 8, 2020 on the docket (PK-5).

The motion for an order awarding attorney's fees is denied without
prejudice. To the extent the motion requests disallowance of claim
No. 9, the motion is denied as moot.

10. [19-15053](#)-B-13 **IN RE: YASMIN APRESA**
[RSW-3](#)

MOTION TO MODIFY PLAN
8-5-2020 [\[44\]](#)

YASMIN APRESA/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in
conformance with the ruling below.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

This motion is GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

11. [17-14055](#)-B-13 **IN RE: WES/GLORIA MCMACKIN**
[PK-8](#)

MOTION TO MODIFY PLAN
7-15-2020 [\[150\]](#)

WES MCMACKIN/MV
PATRICK KAVANAGH/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in
conformance with the ruling below.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

This motion is GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

12. [20-10969](#)-B-13 **IN RE: DIANE PENDLEY**

MOTION TO CONFIRM PLAN
6-24-2020 [\[37\]](#)

DIANE PENDLEY/MV
RICHARD LOA/ATTY. FOR DBT.
DISMISSED 7/9/20

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: An order dismissing the case has already been
entered. Doc. #42.

13. [15-11993](#)-B-13 **IN RE: MARIA ROSALES**
[MHM-3](#)

MOTION TO DISMISS CASE
8-7-2020 [\[97\]](#)

MICHAEL MEYER/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied if debtor current. Granted, if not.

ORDER: The minutes of the hearing will be the court's
findings and conclusions. The court will issue
the order.

This motion was set for hearing on 28 days' notice as required by
Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as
scheduled.

The chapter 13 trustee ("Trustee") asks the court to dismiss this
case because debtor is delinquent in the amount of \$235.00. Doc.
#97. Debtor timely responded, stating that they would be current by
the time of the hearing. Doc. #101.

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case,
whichever is in the best interests of creditors and the estate, for
cause. "A debtor's unjustified failure to expeditiously accomplish
any task required either to propose or to confirm a chapter 13 plan
may constitute cause for dismissal under § 1307(c)(1)." Ellsworth v.
Lifescape Med. Assocs., P.C. (In re Ellsworth), 455 B.R. 904, 915
(9th Cir. BAP 2011). There is "cause" for dismissal under 11 U.S.C.
§ 1307(c)(6) for being delinquent in making plan payments.

This matter will be called to confirm whether debtor is current. If
debtor is current on plan payments, the motion will be denied. If
debtor is not current, the motion may be granted.

14. [17-10199](#)-B-13 **IN RE: GARY WRIGHT AND KIM GRIFFIN-WRIGHT**
[RSW-6](#)

MOTION TO MODIFY PLAN
7-7-2020 [\[89\]](#)

GARY WRIGHT/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in
conformance with the ruling below.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

This motion is GRANTED. The chapter 13 trustee withdrew his opposition on August 28, 2020. Doc. #99. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

15. [19-12622](#)-B-13 **IN RE: JULIE MARTINEZ**
[FW-4](#)

CONTINUED MOTION TO MODIFY PLAN
7-13-2020 [\[59\]](#)

JULIE MARTINEZ/MV
GABRIEL WADDELL/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied without prejudice.

ORDER: The minutes of the hearing will be the court's
findings and conclusions. The court will issue
the order.

This motion was continued to allow debtor to become current on plan payments. If debtor is not current at the hearing, the court intends to deny the motion without prejudice. If debtor becomes current, Trustee will withdraw the opposition and the motion will be granted. If the motion is granted, The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed. If debtor is not current by the continued hearing date, the motion will be denied.

16. [20-11896](#)-B-13 **IN RE: MARTIN/EVANGELINA MENDOZA**
[WDO-1](#)

CONTINUED MOTION TO VALUE COLLATERAL OF TOYOTA MOTOR CREDIT
CORPORATION
6-23-2020 [\[13\]](#)

MARTIN MENDOZA/MV
WILLIAM OLCOTT/ATTY. FOR DBT.

NO RULING.

17. [20-11896](#)-B-13 **IN RE: MARTIN/EVANGELINA MENDOZA**
[APN-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TOYOTA MOTOR
CREDIT CORPORATION
6-29-2020 [\[19\]](#)

TOYOTA MOTOR CREDIT CORPORATION/MV
WILLIAM OLCOTT/ATTY. FOR DBT.
AUSTIN NAGEL/ATTY. FOR MV.

NO RULING.

10:00 AM

1. [12-19709](#)-B-7 **IN RE: TIPAPORN BOERGER**
[PWG-5](#)

MOTION TO AVOID LIEN OF LABOR COMMISSIONER OF THE STATE OF
CALIFORNIA
8-12-2020 [[67](#)]

TIPAPORN BOERGER/MV
PHILLIP GILLET/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in
conformance with the ruling below.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014- 1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

In order to avoid a lien under 11 U.S.C. § 522(f)(1) the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (9th Cir. BAP 2003), quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), aff'd 24 F.3d 247 (9th Cir. 1994).

A judgment was entered against the debtor in favor of Labor Commissioner of the State of California in the sum of \$59,140.84 on August 18, 2011. Doc. #71. The abstract of judgment was recorded with Kern County on April 23, 2012. Id. That lien attached to the debtor's interest in a residential real property in Bakersfield, CA. The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$148,500.00 as of

the petition date. Doc. #37. The unavoidable liens totaled \$230,556.60 on that same date, consisting of a deed of trust in favor of The Mortgage House and a deed of trust in favor of Bank of America, N.A. fka Countrywide Home Loans. Doc. #39. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$1.00. Doc. #38.

Movant has established the four elements necessary to avoid a lien under § 522(f)(1). After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

2. [12-19709](#)-B-7 **IN RE: TIPAPORN BOERGER**
[PWG-6](#)

MOTION TO AVOID LIEN OF LABOR COMMISSIONER OF THE STATE OF CALIFORNIA
8-12-2020 [\[73\]](#)

TIPAPORN BOERGER/MV
PHILLIP GILLET/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

In order to avoid a lien under 11 U.S.C. § 522(f)(1) the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal

property listed in § 522(f)(1)(B). § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (9th Cir. BAP 2003), quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), aff'd 24 F.3d 247 (9th Cir. 1994).

A judgment was entered against the debtor in favor of Labor Commissioner of the State of California in the sum of \$77,116.49 on August 18, 2011. Doc. #77. The abstract of judgment was recorded with Kern County on April 23, 2012. Id. That lien attached to the debtor's interest in a residential real property in Bakersfield, CA. The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$148,500.00 as of the petition date. Doc. #37. The unavoidable liens totaled \$230,556.60 on that same date, consisting of a deed of trust in favor of The Mortgage House and a deed of trust in favor of Bank of America, N.A. fka Countrywide Home Loans. Doc. #39. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$1.00. Doc. #38.

Movant has established the four elements necessary to avoid a lien under § 522(f)(1). After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

3. [20-12314](#)-B-7 **IN RE: SUCCURRA DAVIS**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-11-2020 [\[10\]](#)

SANTANDER CONSUMER USA INC./MV
NEIL SCHWARTZ/ATTY. FOR DBT.
JENNIFER WANG/ATTY. FOR MV.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be

taken as true (except those relating to amount of damages).
Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The movant, Santander Consumer USA Inc. ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2014 BMW 5 Series ("Vehicle"). Doc. #10.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case by case basis." In re Mac Donald, 755 F.2d 715, 717 (9th Cir. 1985).

11 U.S.C. § 362(d)(2) allows the court to grant relief from the stay if the debtor does not have an equity in such property and such property is not necessary to an effective reorganization.

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtor has failed to make at least 3 pre-petition payments and 1 post-petition payment. The movant has produced evidence that debtor is delinquent at least \$3,413.88. Doc. #13.

The court also finds that the debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because debtor is in chapter 7. The Vehicle is valued at \$14,050.00 and debtor owes \$25,883.25. Id.

Accordingly, the motion will be granted pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because Movant is in possession of the vehicle.

4. [20-12432](#)-B-7 **IN RE: JILL RUTLEDGE**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-28-2020 [\[11\]](#)

AMERICREDIT FINANCIAL SERVICES, INC./MV
JENNIFER WANG/ATTY. FOR MV.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in
conformance with the ruling below.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The movant, Americredit Financial Services, Inc. dba GM Financial ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2015 Mitsubishi Mirage ("Vehicle"). Doc. #11.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case by case basis." In re Mac Donald, 755 F.2d 715, 717 (9th Cir. 1985).

11 U.S.C. § 362(d)(2) allows the court to grant relief from the stay if the debtor does not have an equity in such property and such property is not necessary to an effective reorganization.

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtor has failed to make at least 2.46 pre-petition payments. The movant has produced evidence that debtor is delinquent at least \$1,371.30. Doc. #14.

The court also finds that the debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective

reorganization because debtor is in chapter 7. The Vehicle is valued at \$5,475.00 and debtor owes \$12,912.95. Doc. #17.

Accordingly, the motion will be granted pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded. According to the debtor's Statement of Intention, the Vehicle will be surrendered.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because debtor has failed to make at least 2.46 pre-petition payments to Movant and the Vehicle is a depreciating asset.

5. [19-12754](#)-B-7 **IN RE: SUPER TRUCK LINES INC.**
[KAS-7](#)

MOTION FOR COMPENSATION FOR KELSEY A. SEIB, TRUSTEES ATTORNEY(S)
8-11-2020 [\[298\]](#)

THOMAS HOGAN/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

The motion will be GRANTED. Trustee's special counsel, Kelsey A. Seib, requests fees of \$18,256.00 and costs of \$1,020.47 for a total of \$19,276.47 for services rendered from August 19, 2010 through August 10, 2020.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary

expenses." Movant's services included, without limitation: (1) Locating and valuing debtor's trucks and trailers, (2) Selling the estate property with value at auction, (3) Negotiating and entering into a settlement with Super Transport Company, Inc., and (4) Preparing the employment and fee applications. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded \$18,256.00 in fees and \$1,020.47 in costs.

6. [19-15367](#)-B-7 **IN RE: JASPAL KAUR**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
7-29-2020 [\[26\]](#)

WILLIAM EDWARDS/ATTY. FOR DBT.
\$31.00 FILING FEE PAID 8/6/20

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the amendment fee of \$31.00 was paid on August 6, 2020. Therefore, the Order to Show Cause will be vacated.

7. [20-10683](#)-B-7 **IN RE: JOHNNIE SAUNDERS**
[JMV-3](#)

MOTION TO SELL
8-12-2020 [\[39\]](#)

JEFFREY VETTER/MV
NEIL SCHWARTZ/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014- 1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-

mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

This motion is GRANTED. 11 U.S.C. § 363(b)(1) allows the trustee to "sell, or lease, other than in the ordinary course of business, property of the estate."

Proposed sales under 11 U.S.C. § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. In re Alaska Fishing Adventure, LLC, No. 16-00327-GS, 2018 WL 6584772, at *2 (Bankr. D. Alaska Dec. 11, 2018); citing 240 North Brand Partners, Ltd. v. Colony GFP Partners, LP (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (9th Cir. BAP 1996) citing In re Wilde Horse Enterprises, Inc., 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991). In the context of sales of estate property under § 363, a bankruptcy court "should determine only whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." Alaska Fishing Adventure, LLC, 2018 WL 6584772, at *4, quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.). "[T]he trustee's business judgment is to be given great judicial deference." Id., citing In re Psychometric Systems, Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007), citing In re Bakalis, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

The chapter 7 trustee ("Trustee") asks this court for authorization to sell a 32' Road Boss trailer and a 2015 40' Load Maxx trailer ("Estate Assets") at a public auction. Trustee has already hired an auctioneer, and the court approved the auctioneer's employment before. Doc. #34.

It appears that the sale of the Estate Assets at auction is in the best interests of the estate, for a fair and reasonable price derived at the auction, supported by a valid business judgment, and proposed in good faith.

The motion is accordingly GRANTED. Auctioneer is entitled to receive a 15% commission on the gross proceeds of the sale of the Estate Assets; Auctioneer is to receive \$100.00 as an expense reimbursement for pick up and storage of the Estate Assets, and may be reimbursed up to \$150.00 for incurring extraordinary expenses without further court order.

The auction will be held on October 24, 2020 at 9:00 a.m. at 6100 Price Way in Bakersfield, CA 93308. The 14 day stay of the effectiveness of this order under Federal Rule of Bankruptcy Procedure 6004(h) is NOT waived as movant has shown no exigency.

8. [20-11786](#)-B-7 **IN RE: ISAAC/SHANNON DENNIS**
[EAT-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR
ADEQUATE PROTECTION
7-27-2020 [\[15\]](#)

KINECTA FEDERAL CREDIT UNION/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
MARK BLACKMAN/ATTY. FOR MV.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in
conformance with the ruling below.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The movant, Kinecta Federal Credit Union ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2013 GMC Acadia ("Vehicle"). Doc. #15.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case by case basis." In re Mac Donald, 755 F.2d 715, 717 (9th Cir. 1985).

11 U.S.C. § 362(d)(2) allows the court to grant relief from the stay if the debtor does not have an equity in such property and such property is not necessary to an effective reorganization.

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtors have failed to make at least two post-petition payments. The movant has produced evidence that debtors are delinquent at least \$890.12. Doc. #17, 19.

The court also finds that the debtors do not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because debtors are in chapter 7. The Vehicle is valued at \$11,250.00 and debtor owes \$21,634.81. Id.

Accordingly, the motion will be granted pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. The request for adequate protection will be denied without prejudice. Adequate protection is unnecessary in light of the relief granted herein. No other relief is awarded.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because debtors have failed to make at least two post-petition payments to Movant and the Vehicle is a depreciating asset.

9. [20-11987](#)-B-7 **IN RE: RICHARD RODRIGUEZ**
[JMV-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
8-7-2020 [\[18\]](#)

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Continued to September 22, 2020 at 1:30 p.m.

ORDER: The court will issue an order.

The continued § 341 meeting of creditors will be held on September 11, 2020. Therefore, this motion is continued past that date to allow debtor another opportunity to attend the § 341 meeting.

10. [20-11290](#)-B-7 **IN RE: ARTURO/GUADALUPE CISNEROS**
[PK-1](#)

MOTION TO AVOID LIEN OF CITIBANK, N.A.
7-24-2020 [\[21\]](#)

ARTURO CISNEROS/MV
PATRICK KAVANAGH/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the

hearing as required by LBR 9014- 1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

This motion is GRANTED. In order to avoid a lien under 11 U.S.C. § 522(f)(1) the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (9th Cir. BAP 2003), quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), aff'd 24 F.3d 247 (9th Cir. 1994).

A judgment was entered against the debtor in favor of Citibank, N.A. in the sum of \$4,882.44 on May 30, 2019. Doc. #25. The abstract of judgment was recorded with Kern County on August 7, 2019. Id. That lien attached to the debtor's interest in a residential real property in Bakersfield, CA. The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$300,000.00 as of the petition date. Doc. #1. The unavoidable liens totaled \$203,173.00 on that same date, consisting of a first deed of trust in favor of Bank of America. Id. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$96,827.00. Id.

Movant has established the four elements necessary to avoid a lien under § 522(f)(1). After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

11. [20-12398](#)-B-7 **IN RE: JOSE FLORES**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-6-2020 [\[9\]](#)

SANTANDER CONSUMER USA INC./MV
NEIL SCHWARTZ/ATTY. FOR DBT.
JENNIFER WANG/ATTY. FOR MV.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in
conformance with the ruling below.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The movant, Santander Consumer USA Inc. dba Chrysler Capital ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2019 Jeep Renegade ("Vehicle"). Doc. #9.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case by case basis." In re Mac Donald, 755 F.2d 715, 717 (9th Cir. 1985).

11 U.S.C. § 362(d)(2) allows the court to grant relief from the stay if the debtor does not have an equity in such property and such property is not necessary to an effective reorganization.

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtor has failed to make at least 3.67 pre-petition payments. Movant has received no post-petition payments. The movant has produced evidence that debtor is delinquent at least \$1,975.06. Doc. #11, 12.

The court also finds that the debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because debtor is in chapter 7. The Vehicle is valued at \$19,950.00 and debtor owes \$29,019.44. Id.

Accordingly, the motion will be granted pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because debtor has failed to make at least 3.67 pre-petition payments to Movant and the Movant is in possession of the Vehicle.

11:00 AM

1. [19-13374](#)-B-7 **IN RE: KENNETH HUDSON**
[19-1128](#) [NES-1](#)

MOTION BY NEIL E. SCHWARTZ TO WITHDRAW AS ATTORNEY
8-6-2020 [\[71\]](#)

BROWN V. HUDSON
RESPONSIVE PLEADING

NO RULING.

2. [19-13374](#)-B-7 **IN RE: KENNETH HUDSON**
[20-1027](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
5-1-2020 [\[1\]](#)

ROYALTY LENDING II, LTD. V. HUDSON ET AL
CALVIN STEAD/ATTY. FOR PL.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Dropped from calendar.

ORDER: The court will issue the order.

Plaintiff filed a notice of dismissal on August 4, 2020. Doc. #20. Because no answer had been filed prior to the notice, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) (made applicable in bankruptcy proceedings by Federal Rule of Bankruptcy Procedure 7041), the case is dismissed.

3. [20-10024](#)-B-7 **IN RE: SUKHJINDER SINGH**
[20-1036](#)

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT
7-21-2020 [\[14\]](#)

SALVEN V. SINGH ET AL
RUSSELL REYNOLDS/ATTY. FOR PL.

NO RULING.

11:30 AM

1. [20-12432](#)-B-7 **IN RE: JILL RUTLEDGE**

PRO SE REAFFIRMATION AGREEMENT WITH ALLY BANK
8-24-2020 [[23](#)]

NO RULING.

2. [20-11433](#)-B-7 **IN RE: LORENZO MORENO**

REAFFIRMATION AGREEMENT WITH U.S. BANK NATIONAL ASSOCIATION
7-16-2020 [[13](#)]

WILLIAM OLCOTT/ATTY. FOR DBT.

NO RULING.

3. [20-11278](#)-B-7 **IN RE: FERNANDO/CYNTHIA ALEJANDRE**

REAFFIRMATION AGREEMENT WITH WESTAMERICA BANK
7-20-2020 [[26](#)]

PATRICK KAVANAGH/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Denied.

ORDER: The court will issue an order.

Debtor's counsel will inform debtor that no appearance is necessary.

Both the reaffirmation agreement and the bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship which has not been rebutted in the reaffirmation agreement. Although the debtor's attorney executed the agreement, the attorney could not affirm that, (a) the agreement was not a hardship and, (b) the debtor would be able to make the payments.